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09/148,832	09/04/1998	HIROTOSHI MAEGAWA	P3203-8003	4033

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EXAMINER

HAYES, JOHN W

ART UNIT	PAPER NUMBER
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3621

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/148,832
Filing Date: September 04, 1998
Appellant(s): MAEGAWA ET AL.

MAILED

DEC 17 2004

GROUP 3600

Mr. Charles M. Marmelstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 17 September 2004.

Art Unit: 3621

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because appellant provides similar arguments with respect to all three groups.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,892,900

Ginter et al

4-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginter et al, U.S. Patent No. 5,892,900.

Art Unit: 3621

As per claims 52, 18 and 35, Ginter et al disclose a network system (Col. 3, lines 20-25) for suitably distributing any content (Col. 8, lines 23-36; Col. 53, lines 55-60) as a transactable product comprising

- one or more data server means, data utilization means, and transaction management means comprised on the network (Figure 2 and 79-84),
- said data server means and utilization means (Figures 1, 1A and 2 and Col. 54, lines 20-35; Col. 55, lines 32-60) transmit and receive through the network a data package (information package) including a data relating to the transaction which is composed of content materials and/or references to content materials and the attribute data which define an attribute of said data relating to the transaction (Col. 10, lines 8-31; Col. 46, lines 5-27 and 47-67; Col. 54, line 64-Col. 55 line 11; Col. 56, lines 6-29; Col. 56 line 65-Col. 57 line 24; Col. 57, line 65-Col. 58 line 12; Col. 137, lines 50-65)
- and in which the data relating to the transaction, and the attribute data has a format defining a boundary in accordance with an attribute for the transaction and the scope of data to be used for the transaction (Col. 10, lines 8-31; Col. 46, lines 5-27 and 47-67; Col. 54, line 64-Col. 55 line 11; Col. 56, lines 6-29; Col. 56 line 65-Col. 57 line 24; Col. 57, line 65-Col. 58 line 12; Col. 137, lines 50-65)
- said data server means supply through the network the data package (Col. 56, lines 6-29; Col. 57 line 65-Col. 58 line 12),
- said data utilization means receive the supplied data package, and substantially acquiring and utilizing said data of said content according to said boundary (Col. 56, lines 25-30; Col. 58, lines 35-50, Col. 60 line 58-Col. 61 line 18; Col. 62, lines 31-50), and
- said transaction management means performs processing relating to the transaction on the basis of said attribute data every time said data package is received by said data server means or said data utilization means (Col. 10, lines 8-31; Col. 46, lines 5-27 and 47-67; Col. 54, lines 33-35; Col. 55, lines 44-48; Col. 58 line 62-Col. 59 line 6).

Art Unit: 3621

Furthermore, Ginter discloses that data “containers” contain data relating to both the information content and the “rules and controls” or “permissions” for using the data (Figure 5A and 19; Col. 54 line 64-Col. 55 line 11; Col. 56, lines 20-25; Col. 56 line 65-Col. 57 line 24; Col. 57, lines 65-Col. 58 line 12; Col. 59 line 23-Col. 60 line 6). Ginter further discloses that the “rules and controls” may be distributed with the content or separate from the content, and wherein the “rules and controls” are used to set attributes having a format defining boundaries related to the transaction such as who has permission to distribute the rights to use the content (Col. 56, lines 6-29), how many users are allowed to use the content, what a user can and can’t do with the content and how much it costs to use the content (Col. 56, lines 20-25). Ginter further discloses that the “rules and controls” may specify permissions and grant specific individuals or classes of content users access to certain content, what kinds of content usage are permitted and what kinds are not. They may specify how content usage is to be paid for and how much it costs and may require content usage information to be reported back to the distributor and/or content creator (Col. 56 line 65-Col. 57 line 24) which examiner submits is setting boundaries according to an attribute for the transaction. Furthermore, Ginter discloses that the “rules and controls” may specify other boundaries according to an attribute for the transaction such as which financial clearinghouses may process the payments (Col. 57, lines 15-20). Ginter also discloses a metering process that may be specified in the “rules and controls” and includes information such as the type of usage to charge for, what kind of unit to base charges on, how much to charge per unit and how to pay (Col. 58, lines 50-61). Ginter discloses a budget process that limits the amount of content usage that is permitted which is based upon the number of dollars available in a credit account and the budget process records and reports financial and other transaction information associated with such limits (Col. 58 line 64-Col. 59 line 4). Ginter also discloses the use of traveling objects which include budgets reflecting previously purchased rights or credit for future licensing or purchasing, and budgets that employ (and may debit) available credit stored on and managed by the local VDE node in order to enable object content use (Col. 138, lines 5-19). Ginter discloses that a traveling object may include references to a consumer’s VISA, MC, AMEX or other budget that may be used for bill handling and resulting payments (Col. 138, lines 28-55). Ginter also discloses that the information objects may be configured for authenticating, controlling and/or

Art Unit: 3621

auditing electronic commercial transactions and communications such as inter-bank transactions and electronic purchasing communications (Col. 141, lines 5-25).

As per claims 2, 5, 19, 22, 36 and 39, Ginter et al further disclose a network system wherein the boundary set for said data package includes a boundary relating to charging for a transaction of said content, said information of said predetermined attribute included in the data package includes information relating to charging for said content (Col. 46, lines 14-27; Col. 57 lines 1-8; Col. 58, lines 50-61), and said transaction management means has a charging processing means for carrying out processing based on said information relating to charging every time content delineated by said boundary is newly substantially acquired by said data utilization means (Col. 48, lines 45-48; Col. 55, lines 44-50; Col. 58, lines 35-49).

As per claims 3, 20 and 37, Ginter et al further disclose a network system wherein the boundary set for said data package includes a boundary whereby the content delineated by said boundary is content for which a predetermined property right is set, said information of said predetermined attribute included in the data package includes information relating to said property right of said content (Col. 4, lines 28-40; Col. 7, lines 1-12; Col. 54, line 62-Col. 55 line 11; Col. 56, lines 6-24; Col. 56 line 65-Col. 57 line 8), and said transaction management means has a property right management means for carrying out processing for updating a property right of content acquired based on said information relating to said property right every time content delineated by said boundary is newly substantially acquired by said data utilization means (Col. 10, lines 22-31; Col. 46, lines 48-67; Col. 56, lines 25-30).

As per claims 4, 21 and 38, Ginter et al further disclose a network system wherein the boundary set for said data package includes a boundary whereby the content delineated by the boundary is content which at least delineated into a range for which substantial acquisition has been authorized by an authorization, said information of said predetermined attribute included in the data package includes information relating to authorization for substantial acquisition of said content of said data package (Col.

Art Unit: 3621

4, lines 28-40; Col. 7, lines 1-12; Col. 54, line 62-Col. 55 line 11; Col. 56, lines 6-24; Col. 56 line 65-Col. 57 line 8), and said transaction management means has a transaction authorization means for carrying out processing for authorization of transactions to control said substantial acquisition of said content based on said information relating to authorization of transactions when said data utilization means attempts to newly substantially acquire content delineated by said boundary (Col. 10, lines 22-31; Col. 46, lines 48-67; Col. 56, lines 25-30).

As per claims 6, 23 and 40, Ginter et al further disclose a network system as set forth in claim 5, wherein the boundary set for said data package includes a boundary whereby the content delineated by the boundary is content which is at least delineated into a range owned by a predetermined owner and for which substantial acquisition has been authorized by an authorization, said information of said predetermined attribute included in the data package includes information relating to ownership of said content (Col. 4, lines 28-40; Col. 7, lines 1-12; Col. 54, line 62-Col. 55 line 11; Col. 56, lines 6-24; Col. 56 line 65-Col. 57 line 8; Col. 135, lines 22-29), and said transaction authorization means of said transaction management means carries out said processing for authorization of transactions based on said information relating to ownership when said data utilization means attempts to newly substantially acquire content delineated by said boundary (Col. 10, lines 22-31; Col. 46, lines 48-67; Col. 56, lines 25-30).

As per claims 7, 24 and 41, Ginter et al further disclose a network system as set forth in claim 6, wherein the boundary set for said data package includes a boundary whereby the content delineated by the boundary is content which is at least delineated into a range which has value as a creative work and for which substantial acquisition has been authorized by an authorization, said information of said predetermined attribute included in the data package includes information relating to a copyright of said content (Col. 4, lines 28-40; Col. 7, lines 1-12; Col. 47, lines 30-35; Col. 54, line 62-Col. 55 line 11; Col. 56, lines 6-24; Col. 56 line 65-Col. 57 line 8), and said transaction authorization means of said transaction management means carries out said processing for authorization of transactions based on said information relating to said copyright when said data utilization means attempts to newly substantially

Art Unit: 3621

acquire content delineated by said boundary (Col. 10, lines 22-31; Col. 46, lines 48-67; Col. 56, lines 25-30).

As per claims 8, 25 and 42, Ginter et al further disclose a network system as set forth in claim 7, wherein said information of said predetermined attribute of said data package includes information designating said transaction authorization means for carrying out processing relating to authorization of substantial acquisition and said transaction authorization means is provided on any node on the network and is driven by being called up by said transaction management means based on said information designating said transaction authorization means (Col. 10, lines 22-31; Col. 46, lines 15-27 and 48-67; Col. 48, lines 34-50; Col. 55, lines 44-50; Col. 56, lines 25-30; Col. 56 line 65-Col. 57 line 8; Col. 58, lines 50-67).

As per claims 9, 26 and 43, Ginter et al further disclose network system as set forth in claim 8, wherein the substantial acquisition of said content in said data utilization means includes acquisition of said data package and use of said content based on information relating to control for utilization of said content included in the attribute data (Col. 56, lines 25-30; Col. 58, lines 35-50, Col. 60 line 58-Col. 61 line 18; Col. 62, lines 31-50),

As per claims 10, 27 and 44, Ginter et al further disclose a network system as set forth in claim 9, wherein said information relating to control for utilization of said content included in said data package has information for control of said content from the node in which the content exists to the node of the data utilization means and further provision is made of a transmission means for transmitting said content to said data utilization means through said network based on information for controlling said transmission when the data utilization means has requested substantial acquisition of said content (Col. 54, lines 10-32; Col. 54 line 63-Col. 55 line 23; Col. 55 line 62-Col. 56 line 29).

Art Unit: 3621

As per claims 11, 28 and 45, Ginter et al further disclose a network system as set forth in claim 10, wherein

- said data package has, as its content, time series continuous data existing on any node on said network and has, as information for control for utilization of said content, information for control of transmission of said time series continuous data to said data utilization means (Col. 8, lines 27-36; Col. 9, lines 10-32; Col. 53, lines 55-60),
- provision is further made of a transmission management means generated on any node on the network for managing the transmission of said time series continuous data based on said information relating to control for utilization of said content when said data utilization means requests substantial acquisition of said time series continuous data (Col. 10, lines 22-32,
- a transmission means generated by said transmission management means on the node where said time series continuous data exists for acquiring said time series continuous data and transmitting it in a predetermined transfer format (Col. 54, lines 18-32; Col. 55, lines 1-11; Col. 56, lines 6-24), and
- a reception means generated by said transmission management means on the node where said data utilization means exists for receiving data transmitted by said predetermined format and supplying it to said data utilization means (Col. 56, lines 25-30; Col. 60 line 58-Col. 61 line 18), and
- a desired location of said time series continuous data is transmitted to said data utilization means and said data utilization means substantially acquires said transmitted time series continuous data through said transmission means and said reception means based on the control of said transmission management means (Col. 56 line 65-Col. 57 line 8).

As per claims 12, 29 and 46, Ginter et al further disclose a network system as set forth in claim 11, wherein said information relating to control for utilization of said content includes information designating a processing means for utilization of said content and all, some, or one of information on a

Art Unit: 3621

type of the content, a property of the content, restrictions on utilization, owner, creator, type of content, and type of service (Col. 56 line 65-Col. 57 line 24).

As per claims 13, 30 and 47, Ginter et al further disclose a network system as set forth in claim 12, wherein said data package further included information relating to the nature of the content itself (Col. 267, lines 26-54; Col. 286, lines 7-33).

As per claims 14, 31 and 48, Ginter et al further disclose a network system as set forth in claim 14, wherein any information of said information of the data package is information referring to information substantially existing in another data package (Col. 55, lines 1-11; Col. 56, lines 12-24; Col. 57 line 55-Col. 58 line 13).

As per claims 15-17, 32-34 and 49-51, Ginter et al further disclose a network as set forth in claim 14, wherein said data package substantially has part of information substantially existing in said other data package, a reference request generating means for generating a reference request for referring to the entity of the data when the data utilization means utilizes information of the data package referring to another data package, and a management means for managing information on nodes in the vicinity of any node on the network and for searching for a destination of reference (Figures 2-3, 77 and 80-84; Col. 55, lines 1-11; Col. 56, lines 12-24; Col. 57 line 55-Col. 58 line 13), and furthermore wherein a further provision is made of a data package disposal means for managing the state by which information of the data package is referenced from other data packages and managing the disposal of the data package based on the managed state (Col. 10, lines 8-31; Col. 46, lines 5-27 and 47-67; Col. 54, line 64-Col. 55 line 11; Col. 56, lines 6-29; Col. 56 line 65-Col. 57 line 24; Col. 57, line 65-Col. 58 line 12; Col. 137, lines 50-65) .

Art Unit: 3621

(11) Response to Argument

Appellant first contends that Ginter fails to suggest or disclose a network system for suitably distributing any content as a transactable product. Appellant further argues that Ginter's VDE objects have control information that merely defines access rights of users to the content therein and that such "rules and controls" are neither equivalent nor analogous to a format defining a boundary in accordance with an attribute for a transaction and the scope of data to be used for the transaction as claimed in the present invention. Examiner respectfully disagrees and submits that Ginter does disclose a network system for suitably distributing any content as a transactable product along with, or even separate from, the rights and controls that specify how the content is to be used. Ginter's "rules and controls" also define not only access rights of users, but also uses a format to set boundaries in accordance with attributes for a transaction and the scope of data to be used for the transaction. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965 (Fed. Cir. 2003). Recent decisions have indicated that if an inventor is relying on a special meaning for terms appearing in the claims, then the special meaning must be clearly written in the specification. "Although an applicant may be his own lexicographer... nothing in the specification defines the phrase 'speech user agent' differently from its ordinary meaning", see *In Re Thrift*, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002). "One purpose for examining the specification is to determine if the patentee has limited the scope of the claims.' ...For example, an inventor may choose to be his own lexicographer if he defines the specific terms used to describe the invention 'with reasonable clarity, deliberateness, and precision', see *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002) and *In re Paulsen*, 31 USPQ2d 1671, 1674-75 (Fed. Cir. 1994). Examiner would like to note that the term "transact" is not necessarily limited to an exchange of money or other funds. The term "transact" is defined as "to carry to completion" or "to carry out the operation or management of" by Merriam Webster's Collegiate Dictionary, Tenth Edition, © 1997. Examiner notes that the term "transact" was chosen instead

Art Unit: 3621

of the term “transactable” as recited in the claims because the term “transactable” is not a term recognized by the dictionary. Furthermore, examiner has reviewed appellant’s specification and has found no specific language to define the scope or meaning of the term “transactable” which is different than the ordinary and customary meaning as defined by the dictionary.

Examiner submits that Ginter discloses, among other things, that data “containers” contain data relating to both the information content and the “rules and controls” or “permissions” for using the data as well as how to charge or bill for the use of the data (Figure 5A and 19; Col. 54 line 64-Col. 55 line 11; Col. 56, lines 20-25; Col. 56 line 65-Col. 57 line 24; Col. 57, lines 65-Col. 58 line 12; Col. 59 line 23-Col. 60 line 6). Ginter’s rules and controls are specified using specific formats and structures (Figures 16-21, 22, 26, 34, 73, 75A-F, 76A-B; Col. 155 line 38-Col. 157 line 12). Ginter further discloses that the “rules and controls” may be distributed with the content or separate from the content, and wherein the “rules and controls” are used to set attributes having a format defining boundaries related to the transaction such as who has permission to distribute the rights to use the content (Col. 56, lines 6-29), how many users are allowed to use the content, what a user can and can’t do with the content and how much it costs to use the content (Col. 56, lines 20-25). Ginter further discloses that the “rules and controls” may specify permissions and grant specific individuals or classes of content users access to certain content, what kinds of content usage are permitted and what kinds are not. They may specify how content usage is to be paid for and how much it costs and may require content usage information to be reported back to the distributor and/or content creator (Col. 56 line 65-Col. 57 line 24) which examiner submits is setting boundaries according to an attribute for the transaction. Furthermore, Ginter discloses that the “rules and controls” may specify other boundaries according to an attribute for the transaction such as which financial clearinghouses may process the payments (Col. 57, lines 15-20). Ginter also discloses a metering process that may be specified in the “rules and controls” and includes information such as the type of usage to charge for, what kind of unit to base charges on, how much to charge per unit and how to pay (Col. 58, lines 50-61). Ginter discloses a budget process that limits the amount of content usage that is permitted which is based upon the number of dollars available in a credit account and the budget process records and reports financial and other transaction information associated with such limits (Col.

Art Unit: 3621

58 line 64-Col. 59 line 4). Ginter also discloses the use of traveling objects which include budgets reflecting previously purchased rights or credit for future licensing or purchasing, and budgets that employ (and may debit) available credit stored on and managed by the local VDE node in order to enable object content use (Col. 138, lines 5-19). Ginter discloses that a traveling object may include references to a consumer's VISA, MC, AMEX or other budget that may be used for bill handling and resulting payments (Col. 138, lines 28-55). Ginter also discloses that the information objects may be configured for authenticating, controlling and/or auditing electronic commercial transactions and communications such as inter-bank transactions and electronic purchasing communications (Col. 141, lines 5-25).

In support of appellant's invention, appellant cites an example of a movie distribution service wherein content and control information are distributed via an information package configured using a predetermined information structure or format defining a boundary. Examiner submits that the environment and system/data structure disclosed by Ginter supports exactly this type of scenario. Ginter even discloses using the rights and controls or permissions record to control the use and payment of certain content or traveling object content such as a movie object that might be a Blockbuster video rental (Col. 138, lines 28-42).

Appellant further argues that the invention utilizes a received data package in accordance with the boundary of the received data package and transaction management means perform processing relating to the transaction on the basis of the boundary of the package every time the data package is received by the data utilization means. Examiner respectfully submits that Ginter discloses this as well. Ginter discloses that in the preferred embodiment, there is at least one PERC (permissions record) that corresponds to each information and/or transactional content distributed by the system, and further that no end user may use or access an object unless a permissions record has been delivered to the end user (Col. 155, lines 40-56; Col. 54, lines 33-56). Thus, Ginter discloses that rules and controls correspond to each object, thereby teaching that processing is carried out relating to the transaction on the basis of the boundary of the package every time the data package is received by the data utilization means.

Appellant further argues that in reference to the movie distribution context, the configured information package is processed or converted into a corresponding internal expression to be used by the

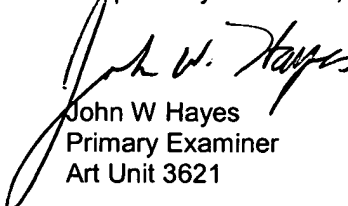
Art Unit: 3621

information consumer for retrieving and displaying the content. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., processing or converting a configured information package into a corresponding internal expression) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant's have provided no new arguments for the claims of Group II and Group III and are the same as the claims of Group I above. Thus, examiners response for the claims of Group II and Group III are the same as above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


John W Hayes
Primary Examiner
Art Unit 3621

JWH

December 9, 2004

Conferees



Joseph Thomas (Appeal Conference Specialist, SPE 3626)

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